

# Regulatory Analysis Form

(Completed by Promulgating Agency)

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency

Insurance Department

(2) Agency Number:

Identification Number: 11-261

(3) PA Code Cite:

31 Pa. Code § 89.12(e)

(4) Short Title:

Approval of Life, Accident and Health Insurance

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact:

Eric W. Carlisle  
Legal Office Administrator 1 & Regulatory Coordinator  
1341 Strawberry Square  
Harrisburg, PA 17120  
(717) 346-5628  
[ercarlisle@pa.gov](mailto:ercarlisle@pa.gov)

Secondary Contact:

Richard L. Hendrickson, Esq.  
Department Counsel  
1341 Strawberry Square  
Harrisburg, PA 17120  
(717) 787-2567  
[rihendrick@pa.gov](mailto:rihendrick@pa.gov)

(6) Type of Rulemaking (check applicable box):

- Proposed Regulation  
 Final Regulation  
 Final Omitted Regulation

- Emergency Certification Regulation;  
 Certification by the Governor  
 Certification by the Attorney General

**INDEPENDENT REGULATORY  
REVIEW COMMISSION  
RECEIVED**

APR 04 2023

Independent Regulatory  
Review Commission

IRRC Number:

3367

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

This proposed regulation amends 31 Pa. Code § 89.12(e) to permit life, accident and health insurers to collect demographic data related to race and ethnicity on applications for life, accident, and health insurance. It also provides guidelines for the collection of the data, including that it is voluntary and must be used to further efforts to provide more equitable coverage.

(8) State the statutory authority for the regulation. Include specific statutory citation.

This rulemaking is proposed under the Department's general rulemaking authority as set forth in sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412), section 314 of the act of December 22, 2011 (P.L. 614, No. 134) known as the Accident and Health Filing Reform Act (40 P.S. § 3801.314), and the Department's rulemaking authority under the Unfair Insurance Practices Act (40 P.S. §§ 1171.1-1171.15). See *PALU v. Insurance Department*, 371 A.2d 564 (Pa. Cmwlth. 1977) (further explaining the Insurance Commissioner's authority to promulgate regulations under the Unfair Insurance Practices Act).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No. However, as set forth in the 2023 Notice of Benefit and Payment Parameters issued by the federal Department of Health and Human Services, starting with the 2025 benefit year, health insurers will be required to collect race and ethnicity data. The details of this federal proposal have not been completely finalized, but this proposed amendment to section 89.12(e) will allow the Commonwealth's health insurers to comply with proposed federal requirements without any state law inconsistencies.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

This regulation is necessary because insurers need effective tools to identify and address inequities in insurance coverage. By amending section 89.12(e), the Department will allow life, accident, and health insurers to ask applicants for demographic data related to their race or ethnicity. Allowing this collection in accordance with the specific guidelines set forth in Annex A will help insurers responsibly adapt their coverage strategies to ensure that all Pennsylvanians have access to quality coverage. This will not only benefit individuals who may not have access now, but it will also benefit the larger insurance market in the Commonwealth by making it more stable and inclusive. This is especially important because Pennsylvania has the fifth largest insurance market in the U.S. based on premium volume, serving hundreds of thousands of Pennsylvanians.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

There is no readily available information related to a state pursuing a regulatory change similar to this proposed amendment. However, there are other ongoing efforts to address insurance inequities through the collection of race and ethnicity data. For example, New York recently requested information from its industry members to better understand their industry's equity initiatives, including the collection of race and ethnicity data on applications. The proposed amendment in this case demonstrates that the Commonwealth is a part of the national trend of ongoing equity initiatives and will keep the Commonwealth's insurers on par with their surrounding industry members.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

Pursuant to Executive Order 1996-1, on October 11, 2022, the Department circulated an exposure draft of Annex A to representatives of insurance carriers who currently issue, or may potentially issue, life, accident, and health insurance policies, including the Insurance Federation of Pennsylvania, Inc., the Pennsylvania Association of Mutual Insurance Companies, and the health insurers offering major medical coverage in the Commonwealth. Comments received were carefully considered in developing the proposed rulemaking.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

This proposed rulemaking will affect consumers who apply to purchase a life, accident, or health insurance policy in the Commonwealth, as well as the insurers offering those policies. Prospective insureds will have the opportunity to voluntarily provide race and ethnic demographic data on the application for the life, accident, or health insurance product that they are seeking to purchase. Insurers will be permitted to voluntarily include an additional question on their application related to gathering racial and ethnic demographic data from applicants, subject to the safeguards set forth in Annex A. The effect of this data collection will support efforts to provide equitable coverage and will have minimal impact on applicants and insureds primarily because the collection of the data is voluntary from both parties.

(16) List the persons, groups or entities, including small businesses, which will be required to comply with the regulation. Approximate the number that will be required to comply.

The collection of demographic data as allowed by this proposed rulemaking does not impose any requirements, but does provide life, accident, and health insurers the ability to voluntarily request racial and ethnic demographic information on their applications. With that qualification, this rulemaking will potentially affect foreign and domestic life, accident, and health insurers that hold a certificate of authority to write life, accident and health insurance contracts in the Commonwealth. The Department has identified approximately 1,003 licensees that fall within this definition. Of these licensees, 24 domestic licensees qualify as small businesses. The definition of small business in this context is a life, accident or health insurance company that earns less than \$38.5 million in direct written premium annually.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

Although it is not possible to quantify the exact cost that would be incurred by an insurer choosing to collect racial and ethnic demographic data on their applications, the proposed rulemaking may have some adverse fiscal impact on life, accident, and health insurance companies as they develop tools to collate, store and report the data, if applicable. Costs of compliance with the amendment will vary by insurer. It is important to note that any costs will be voluntarily assumed because it will be the insurer's prerogative whether to collect race and ethnicity data on their applications.

It is likewise difficult to quantify the economic and social impact of the proposed rulemaking. However, the proposed rulemaking will offer insurers the opportunity to voluntarily collect information that helps directly address coverage inequities across the Commonwealth. This will both positively impact the Commonwealth's continued efforts to promote equity across society and help strengthen the insurance market through expanding the number of people actively participating in it. Insurers choosing to collect the data will have additional information and tools at their disposal to identify disparities and to effectively address them. In turn, the Department would anticipate increased coverage across the Commonwealth.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The expected minimal cost of the proposed rulemaking, should an insurer choose to collect racial and ethnic demographic data, will be outweighed by its contribution to the Commonwealth's progress toward societal equity and a stronger, more inclusive insurance market for all Pennsylvanians. Additionally, the guardrails included in Annex A will ensure that the data will not be used for purposes other than promoting equity.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Because costs of compliance with the rulemaking will vary from insurer to insurer, it is not feasible for the Department to quantify the exact cost that would be incurred by an insurer choosing to collection

racial and ethnic demographic data on their applications. Costs will vary based upon the insurer's choice to collect the data, existing data practices, and the insurer's need to update current systems to accommodate the new option to collect data.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This rulemaking will not impose any costs and/or savings to local governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

This rulemaking will not impose any costs and/or savings to state government.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Insurers that choose to collect the demographic data must provide written attestation to the Department that their demographic data collection practices are consistent with the requirements in the regulation.

The initial written attestation must be reported to the Department at the earlier of the date the product is filed, or if there is a material change to the application, or no later than 180 days following the effective date.

Requiring one attestation per company streamlines the paperwork that must be submitted to the Department and makes the Department review of compliance as simple as possible.

(22a) Are forms required for implementation of the regulation?

There are no forms required for implementation of the regulation.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

N/A

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
--	---------------	---------------	---------------	---------------	---------------	---------------

	Year					
	\$	\$	\$	\$	\$	\$
<b>SAVINGS:</b>						
Regulated Community**	0	0	0	0	0	0
Local Government*	0	0	0	0	0	0
State Government*	0	0	0	0	0	0
<b>Total Savings</b>	0	0	0	0	0	0
<b>COSTS:</b>	0	0	0	0	0	0
Regulated Community**	0	0	0	0	0	0
Local Government*	0	0	0	0	0	0
State Government*	0	0	0	0	0	0
<b>Total Costs</b>	0	0	0	0	0	0
<b>REVENUE LOSSES:</b>	0	0	0	0	0	0
Regulated Community **	0	0	0	0	0	0
Local Government*	0	0	0	0	0	0
State Government*	0	0	0	0	0	0
<b>Total Revenue Losses</b>	0	0	0	0	0	0

\*As explained above, there are no expected costs, savings, or revenue losses that would be incurred by local or state government as a result of these amendments.

\*\* As explained above, because costs of compliance with the rulemaking will vary from insurer to insurer, it is not feasible for the Department to quantify the exact cost that would be incurred by an insurer choosing to collect the demographic data. Costs will vary based upon the insurer's choice to collect the data and existing data collection practices. It is not expected that this rulemaking will result in any loss of revenue to the regulated community. Further, there is no regulatory obligation imposed upon insurers since collection of the data is voluntary.

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A***	N/A***	N/A***	N/A***	N/A***


\*\*\*There is no "program" operated by the Department that will be affected by this proposed regulation. Rather, the regulatory activities that are necessary to ensure compliance with this regulation are dispersed throughout the Department.

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

***Identification and Estimate of Small Business Subject to the Regulation***

The Department reviewed standards set forth by 13 CFR § 121.201 and the U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System (NAICS) Codes to determine the applicability of this rulemaking to Pennsylvania small businesses. The standards for small business classification vary by type of business written as follows:

**Subsector 524 – Insurance Carriers and Related Activities**

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars / Size Standards in number of employees
524113	Direct Life Insurance Carriers	\$38.5
524114	Direct Health and Medical Insurance Carriers	\$38.5
524126	Direct Property and Casualty Insurance Carriers	1,500 employees
524127	Direct Title Insurance Carriers	\$38.5

524128	Other Direct Insurance (except Life, Health and Medical) Carriers	\$38.5
524130	Reinsurance Carriers	\$38.5
524210	Insurance Agencies and Brokerages	\$7.5
524291	Claims Adjusting	\$20.5
524292	Third Party Administration of Insurance and Pension Funds	\$32.5
524298	All Other Insurance Related Activities	\$15.0

Based upon the limited information available to the Department, the Department has identified the following numbers of domestic companies that may meet the definition of "small business:" 15 Fraternal Benefit Societies and 9 Direct Life Insurance Carriers.

***Projected costs of compliance and probable effect on impacted small businesses***

The proposed rulemaking does not impose any reporting or recordkeeping requirements on the regulated community because the collection of the demographic data is voluntary. Insurers choosing to collect the demographic data may incur minimal administrative cost in implemented the guardrails set forth in Annex A. However, because insurers utilize general data collection processes in the normal course of business, it is not possible to quantify the extent of additional services required, if any. Additionally, the rulemaking is not anticipated to influence small businesses.

***Alternative methods***

The Department is unaware of any less intrusive or less costly alternative methods for achieving the purpose of the proposed rulemaking, which is to provide an opportunity for insurers to collect racial and ethnic demographic data on applications for the purpose of promoting coverage equity.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

Because the Department is not aware of any alternative methods for achieving the purpose of the amendment, no provisions were developed to meet the particular needs for minorities, the elderly, small businesses, or farmers.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory provisions were considered. There is no less burdensome acceptable alternative to the proposed amendment, which allows insurers to voluntarily collect racial and ethnic demographic data.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:



- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The Department did not consider regulatory methods to minimize adverse impact on small businesses, but the proposed rulemaking makes the collection of data voluntary. The voluntary collection of demographic data as set forth in the proposed amendment promotes greater equity in the insurance market regardless of the company issuing the application. Consumers that purchase life, accident, and health insurance from smaller insurers should be provided the same equitable treatment as consumers purchasing insurance through larger insurers. The proposed rulemaking provides those smaller insurers the same opportunities to identify and address equity issues in the coverages they offer. Also, it should be noted that the Department does not have the statutory authority to grant an exemption of small businesses from all or any part of the proposed amendments.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data is not the basis for this proposed rulemaking.

(29) Include a schedule for review of the regulation including:

- A. The length of the public comment period - 30 days
- B. The date or dates on which any public meetings or hearings will be held: None
- C. The expected date of delivery of the final-form regulation: Fall 2023
- D. The expected effective date of the final-form regulation: Winter 2023-2024
- E. The expected date by which compliance with the final-form regulation will be required: Winter 2023-2024
- F. The expected date by which required permits, licenses or other approvals must be obtained: N/A

**(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.**

**The Department reviews each of its regulations for continued effectiveness on a triennial basis.**



FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU

APR 04 2023

Independent Regulatory Review Commission

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to Form and legality. Attorney General</p> <p><b>Amy M. Elliott</b> BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p><small>Digitally signed by Amy M. Elliott DN: cn=Amy M. Elliott, o=Pennsylvania Office of Attorney General, ou=Office of Deputy Attorney General, email=ae@attorneygeneral.gov, c=US Date: 2023.01.23 12:51:30 -0500</small></p> <p><u>1/25/2023</u> DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable. Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed, or promulgated by:</p> <p>INSURANCE DEPARTMENT (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. _____</p> <p>DATE OF ADOPTION: _____</p> <p>BY:  _____ Michael Humphreys Acting Insurance Commissioner (EXECUTIVE OFFICER, CHAIRMAN, OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive and Independent Agencies</p> <p>BY:  _____ DEPUTY GENERAL COUSEL (Chief Counsel, Independent Agency)</p> <p><u>12/28/2022</u> DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
---	---	---

NOTICE OF PROPOSED RULEMAKING

INSURANCE DEPARTMENT

31 Pa. Code Chapter 89

CHAPTER 89. APPROVAL OF LIFE, ACCIDENT AND HEALTH INSURANCE

Subchapter A. REQUIREMENTS FOR ALL POLICIES AND FORMS

PREPARATION OF FORMS

**PROPOSED RULEMAKING**

**INSURANCE DEPARTMENT**

**31 PA. CODE CH. 89**

**CHAPTER 89. APPROVAL OF LIFE, ACCIDENT AND HEALTH INSURANCE**

**Subchapter A. REQUIREMENTS FOR ALL POLICIES AND FORMS**

**PREPARATION OF FORMS**

[ \_\_\_\_\_ Pa.B. \_\_\_\_\_ ]  
[Saturday, \_\_\_\_\_, 202\_\_]

**Preamble**

The Insurance Department (Department) proposes to amend Chapter 89 (related to approval of life, accident and health insurance) to read as set forth in Annex A. This rulemaking is proposed under the Department's general rulemaking authority as set forth in sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412), section 314 of the act of December 22, 2011 (P.L. 614, No. 134) known as the Accident and Health Filing Reform Act (40 P.S. § 3801.314), and the Department's rulemaking authority under the Unfair Insurance Practices Act (40 P.S. §§ 1171.1-1171.15). See *PALU v. Insurance Department*, 371 A.2d 564 (Pa. Cmwlth. 1977) (further explaining the Insurance Commissioner's authority to promulgate regulations under the Unfair Insurance Practices Act).

***Background & Purpose***

The proposed rulemaking, as set forth in Annex A, would allow for the voluntary collection of demographic data, including questions related to race and ethnicity when certain criteria are met. Specifically, the proposed amendment to section 89.12 would allow insurers to collect data that will help them develop better tools to address inequities in life, accident, and health insurance coverage. Moreover, this proposed amendment would be consistent with federal and state efforts to address equity issues across society generally. For example, at the federal level, the 2023 Notice of Benefit and Payment Parameters takes significant steps toward requiring health insurers to collect race and ethnicity data; beginning with the 2025 benefit year, health insurers will be required to collect it. Amending 31 Pa. Code § 89.12(e) will allow Pennsylvania's health insurers to comply with this upcoming federal requirement and remove an inconsistency between state and federal provisions.

The provision, as currently written in § 89.12(e), addresses the inequities that were the focus of the landmark Civil Rights Act of 1964, which prohibited "discrimination or segregation on the ground of race, color, religion or national origin." Civil Rights Act of 1964 (P.L. 88-352 (78 Stat. 241)) (July 1, 1964). Following that national precedent, on July 1, 1969, the Department issued section 89.12 for

application forms, including: “Questions as to race or color are not permitted on the application.” 31 Pa. Code § 89.12(e).

In the 54 years since the 1969 issuance, society has continued to grapple with racial and ethnic equity issues. More recently, society has recognized that inequities can only be addressed if they are adequately identified. To identify those issues and measure improvement in addressing them, data is necessary. The proposed amendment will allow insurers to collect that data, if they choose, while continuing to prohibit insurers from using that data in an unfairly discriminatory manner. This is consistent with ongoing federal initiatives outlined in 2023 Notice of Benefit and Payment Parameters and will allow the Commonwealth’s regulations to remain consistent with federal law.

### ***Explanation of Regulatory Requirements***

Proposed amended section 89.12(e) (application forms) allows an insurer to include questions as to demographic factors, including race and ethnicity, on an application.

Proposed section 89.12(e)(1) requires an application to clearly state that the disclosure is voluntary.

Proposed section 89.12(e)(2) requires any questions as to the data to include the following options verbatim: (i) Prefer Not to Answer; (ii) Other.

Proposed section 89.12(e)(3) requires an insurer to provide, at the time of application or when the data is collected, the prospective insured with a written statement including that the data will be maintained as private, that the data may not be used by the insurer for eligibility determinations, underwriting, or rating purposes, and that the insurer may not deny an application based on the applicant’s refusal to answer the questions related to demographic data on the application.

Proposed section 89.12(e)(4) requires an insurer to provide to the insured a written explanation as to why the data is being requested by the insurer and how the data will be used to support efforts to provide equitable coverage.

Proposed section 89.12(e)(5) requires the insurer to provide written attestation to the Department that the application, collection, and use of demographic data meets state and federal laws regarding unfair discrimination, including that the data is maintained as private, the data may not be used for eligibility determinations, underwriting, or rating purposes, and that the insurer may not deny an application based on the applicant’s refusal to answer the question related to demographic data on the application.

Proposed section 89.12(e)(6) requires the insurer to submit the written attestation set forth in proposed section 89.12(e)(5) by 180 days after the effective date of the regulation, the date the product is filed, or the date that there is a material change to the data collection process even if no filing is required.

Proposed section 89.12(f) states that an insurer is not required to collect demographic information, including race and ethnicity at the time of application or otherwise.

### ***External Comments***

The Department circulated an exposure draft similar to this proposed rulemaking to several industry participants including the Insurance Federation of Pennsylvania, Inc., the Pennsylvania Association of Mutual Insurance Companies, and several health insurers. The exposure draft was circulated on October 11, 2022. The Department has also discussed this topic informally with industry members over approximately the last year. The Department considered all comments, responded to several questions, and incorporated revisions to the proposed rulemaking based upon stakeholder feedback.

### ***Affected Parties***

This rulemaking will affect foreign and domestic insurers that issue individual and group life, accident and health insurance contracts in the Commonwealth.

### ***Fiscal Impact***

#### ***State Government***

There will not be any fiscal impact to the Department as a result of this proposed rulemaking.

#### ***General Public***

The proposed rulemaking will have no fiscal impact upon the general public.

#### ***Political Subdivisions***

The proposed rulemaking will have no fiscal impact upon political subdivisions.

#### ***Private Sector***

The proposed rulemaking will have no fiscal impact upon the private sector, except for a possible minimal impact to the regulated entities who choose to collect the data.

### ***Paperwork***

The proposed rulemaking would impose minimal additional paperwork on the Department because it would be reviewing attestations and related information submitted by insurers choosing to collect the demographic data. The Department does not anticipate that this additional review will materially impact its regulatory activities.

### ***Effectiveness/Sunset Date***

The proposed rulemaking will become effective immediately upon final-form publication in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

***Contact Person***

Questions or comments regarding the proposed rulemaking may be addressed in writing to Eric Carlisle, Regulatory Coordinator, Insurance Department, 1341 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to [ercarlisle@pa.gov](mailto:ercarlisle@pa.gov) or faxed to (717) 772-1969.

***Regulatory Review***

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 4, 2023, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final delivery of the rulemaking, by the Department, the General Assembly and the Governor.

*Michael Humphreys*  
*Acting Insurance Commissioner*

ANNEX A

TITLE 31. INSURANCE

PART IV. LIFE INSURANCE

CHAPTER 89. APPROVAL OF LIFE, ACCIDENT AND HEALTH INSURANCE

Subchapter A. REQUIREMENTS FOR ALL POLICIES AND FORMS

PREPARATION OF FORMS

§ 89.12. Application forms.

(a) When submitting a policy form to which a copy of the application will be attached when the policy is issued, a copy of the application shall be attached to the policy form. If the form of the application has already been approved, the form number and date of approval shall be shown either on the form or in the transmittal letter.

(b) If it is the practice of the insurer to attach a reduced size reproduction of the application to a form when issued, the application should be attached to each copy of the form submitted. The application should be legibly reproduced in the size to be used in the contract.

(c) An application which includes a provision for home office endorsements or corrections may not be approved for use unless it is specifically stipulated therein that a change may not be made in the amount of insurance, the age at issue, the plan of insurance or benefits applied for by the endorsements or corrections. This subsection does not apply to group applications.

(d) Applications shall contain clear and direct questions by the insurer permitting answers by the applicant only in the form of direct statements of known facts. Applications may not contain questions or representations based on indefinite or ambiguous terms or which are inconsistent with policy provisions and may not require the making of warranties by the applicant.

(e) [Questions as to race or color are not permitted on the application.] **An insurer may include questions as to demographic factors, including race and ethnicity, on an application subject to the following:**

**(1) The application clearly states that the disclosure of the data is voluntary.**

**(2) Any questions as to the data include the following answer options verbatim:**

**(i) Prefer Not to Answer.**



**(ii) Other.**

**(3) At the time of application or when the data is collected, the insurer provides to the insured a written statement that:**

**(A) The data will be maintained as private.**

**(B) The data may not be used by the insurer for eligibility determinations, underwriting, or rating purposes.**

**(C) The insurer may not deny an application based on the applicant's refusal to answer the questions related to demographic data on the application.**

**(4) At the time of application or when the data is collected, the insurer provides a written explanation to the insured regarding:**

**(i) Why the data is being requested by the insurer.**

**(ii) How the data will support efforts to provide equitable coverage.**

**(5) The insurer provides a written attestation to the Department that the insurer's application, collection, and use of data meets state and federal law regarding unfair discrimination, including all of the following:**

**(i) Each insured's data is maintained as private.**

**(ii) The insured's data may not be used by the insurer for eligibility determinations, underwriting, or rating purposes.**

**(iii) The insurer may not deny an application based on the applicant's refusal to answer the questions related to demographic data on the application.**

**(6) The insurer shall provide the written attestation in subparagraph (5) for each product by:**

**(i) [LRB to insert date 180 days following the effective date of this regulation], for products in existence as of the effective date of this regulation.**

**(ii) the date the product is filed.**

**(iii) the date that there is a material change to the application or data collection process, even if not required to be filed.**

**(f) Nothing in this subsection shall be construed to require an insurer to collect demographic information, including race and ethnicity data, at the time of application or otherwise.**



GOVERNOR'S OFFICE OF GENERAL COUNSEL

April 4, 2023

David Sumner  
Executive Director  
Independent Regulatory Review Commission  
333 Market Street., 14<sup>th</sup> Fl.  
Harrisburg, PA 17120

RE: Insurance Department Proposed-form Regulation No. 11-261  
Amending 31 Pa. Code § 89.12(e)  
Approval of Life, Accident and Health Insurance Application Forms

Dear Mr. Sumner:

Pursuant to Section 5(a) of the Regulatory Review Act, enclosed for your information and review is proposed regulation 11-261, Approval of Life, Accident and Health Insurance Application Forms. Acknowledgements of receipt from the legislative committees is also enclosed.

This proposed rulemaking would allow for the voluntary collection of demographic data on life, accident, and health insurance applications, including questions related to race and ethnicity, when certain criteria are met.

If you have any questions regarding this matter, please contact me at (717) 346-5628.

Sincerely yours,

Eric W. Carlisle  
Regulatory Coordinator

**Carlisle, Eric**

---

**From:** Humma, Jonathan <jhumma@pasen.gov>  
**Sent:** Tuesday, April 4, 2023 10:37 AM  
**To:** Carlisle, Eric  
**Cc:** Hendrickson, Richard  
**Subject:** RE: Proposed Regulation 11-261

Eric, thanks for sending PID's proposed regulation 11-261. I confirm receipt on behalf of Chairman DiSanto.

Sincerely,

**Jonathan Humma**, Executive Director  
Senate Banking & Insurance Committee  
Chairman John DiSanto, District 15  
168 Main Capitol, Harrisburg, PA 17120  
717-787-6801, [www.SenatorDiSanto.com](http://www.SenatorDiSanto.com)

**RECEIVED**

APR 04 2023

Independent Regulatory  
Review Commission

---

**From:** Carlisle, Eric <ercarlisle@pa.gov>  
**Sent:** Tuesday, April 4, 2023 10:33 AM  
**To:** Humma, Jonathan <jhumma@pasen.gov>  
**Cc:** Hendrickson, Richard <rihendrick@pa.gov>  
**Subject:** Proposed Regulation 11-261  
**Importance:** High

© CAUTION : External Email ©

Dear Mr. Humma,

On behalf of Senator DiSanto, attached please find the Department's Proposed Regulation 11-261 package amending 31 Pa. Code § 89.12(e), for your reference.

Kindly reply to this email acknowledging receipt.

**Eric W. Carlisle**, M.Ed., M.A., M.Ed., M.Leg.S.  
Legal Office Administrator 1 | Regulatory Coordinator  
Insurance Department | Office of Chief Counsel  
1341 Strawberry Square | Harrisburg, PA 17101  
Phone: 717-346-5628 | Fax: 717-772-1969  
[ercarlisle@pa.gov](mailto:ercarlisle@pa.gov) | [www.ogc.pa.gov](http://www.ogc.pa.gov)  
[www.insurance.pa.gov](http://www.insurance.pa.gov)

**Carlisle, Eric**

---

**From:** Morris, Dustin <Dustin.Morris@pasenate.com>  
**Sent:** Tuesday, April 4, 2023 1:16 PM  
**To:** Carlisle, Eric  
**Cc:** Hendrickson, Richard  
**Subject:** RE: Proposed Regulation 11-261

RECEIVED

APR 04 2023

Independent Regulatory  
Review Commission

Received.

Thanks,  
Dustin

---

**From:** Carlisle, Eric <ercarlisle@pa.gov>  
**Sent:** Tuesday, April 4, 2023 10:33 AM  
**To:** Morris, Dustin <Dustin.Morris@pasenate.com>  
**Cc:** Hendrickson, Richard <rihendrick@pa.gov>  
**Subject:** Proposed Regulation 11-261  
**Importance:** High

■ EXTERNAL EMAIL ■

---

Dear Mr. Morris,  
On behalf of Senator Street, attached please find the Department's Proposed Regulation 11-261 package amending 31 Pa. Code § 89.12(e), for your reference.

Kindly reply to this email acknowledging receipt.

**Eric W. Carlisle**, M.Ed., M.A., M.Ed., M.Leg.S.  
Legal Office Administrator 1 | Regulatory Coordinator  
Insurance Department | Office of Chief Counsel  
1341 Strawberry Square | Harrisburg, PA 17101  
Phone: 717-346-5628 | Fax: 717-772-1969  
[ercarlisle@pa.gov](mailto:ercarlisle@pa.gov) | [www.ogc.pa.gov](http://www.ogc.pa.gov)  
[www.insurance.pa.gov](http://www.insurance.pa.gov)

This message and any attachment may contain privileged or confidential information intended solely for the use of the person to whom it is addressed. If the reader is not the intended recipient then be advised that forwarding, communicating, disseminating, copying or using this message or its attachments is strictly prohibited. If you receive this message in error, please notify the sender immediately and delete the information without saving any copies.

**Carlisle, Eric**

---

**From:** Cohn, Alan J. <ACohn@pahouse.net>  
**Sent:** Tuesday, April 4, 2023 10:37 AM  
**To:** Carlisle, Eric  
**Cc:** Hendrickson, Richard; Keller, Joseph  
**Subject:** RE: Proposed Regulation 11-261

**RECEIVED**

APR 04 2023

Independent Regulatory  
Review Commission

Received.

Alan J. Cohn

---

**From:** Carlisle, Eric <ercarlisle@pa.gov>  
**Sent:** Tuesday, April 4, 2023 10:33 AM  
**To:** Cohn, Alan J. <ACohn@pahouse.net>  
**Cc:** Hendrickson, Richard <rihendrick@pa.gov>  
**Subject:** Proposed Regulation 11-261  
**Importance:** High

Dear Mr. Cohn,

On behalf of Representative Boyle, attached please find the Department's Proposed Regulation 11-261 package amending 31 Pa. Code § 89.12(e), for your reference.

Kindly reply to this email acknowledging receipt.

**Eric W. Carlisle**, M.Ed., M.A., M.Ed., M.Leg.S.  
Legal Office Administrator 1 | Regulatory Coordinator  
Insurance Department | Office of Chief Counsel  
1341 Strawberry Square | Harrisburg, PA 17101  
Phone: 717-346-5628 | Fax: 717-772-1969  
[ercarlisle@pa.gov](mailto:ercarlisle@pa.gov) | [www.ogc.pa.gov](http://www.ogc.pa.gov)  
[www.insurance.pa.gov](http://www.insurance.pa.gov)

**Carlisle, Eric**

---

**From:** David Greineder <Dgreineder@pahousegop.com>  
**Sent:** Tuesday, April 4, 2023 11:16 AM  
**To:** Carlisle, Eric; Sara Peck  
**Cc:** Hendrickson, Richard  
**Subject:** RE: Proposed Regulation 11-261

**RECEIVED**

APR 04 2023

Independent Regulatory  
Review Commission

Received.

---

**From:** Carlisle, Eric <ercarlisle@pa.gov>  
**Sent:** Tuesday, April 4, 2023 10:33 AM  
**To:** David Greineder <Dgreineder@pahousegop.com>; Sara Peck <speck@pahousegop.com>  
**Cc:** Hendrickson, Richard <rihendrick@pa.gov>  
**Subject:** Proposed Regulation 11-261  
**Importance:** High

Dear Mr. Greineder,

On behalf of Representative Pickett, attached please find the Department's Proposed Regulation 11-261 package amending 31 Pa. Code § 89.12(e), for your reference.

Kindly reply to this email acknowledging receipt.

**Eric W. Carlisle**, M.Ed., M.A., M.Ed., M.Leg.S.  
Legal Office Administrator 1 | Regulatory Coordinator  
Insurance Department | Office of Chief Counsel  
1341 Strawberry Square | Harrisburg, PA 17101  
Phone: 717-346-5628 | Fax: 717-772-1969  
[ercarlisle@pa.gov](mailto:ercarlisle@pa.gov) | [www.ogc.pa.gov](http://www.ogc.pa.gov)  
[www.insurance.pa.gov](http://www.insurance.pa.gov)

*The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this information in error, please contact the sender and delete the message and material from all computers.*

**Carlisle, Eric**

**RECEIVED**

**From:** Bulletin <bulletin@palrb.us>  
**Sent:** Tuesday, April 4, 2023 10:41 AM  
**To:** Carlisle, Eric  
**Cc:** Hendrickson, Richard; Adeline E. Gaydosh  
**Subject:** [External] Re: Proposed Regulation 11-261

APR 04 2023

Independent Regulatory  
Review Commission

**ATTENTION:** This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).

Good morning Eric,

Thank you for sending this proposed rulemaking. It is schedule for publication in the 4/15 issue of the *Pennsylvania Bulletin*.

Have a lovely afternoon,  
Adeline

**Adeline Gaydosh | Legal Assistant**  
agaydosh@palrb.us | 717.783.3984  
Legislative Reference Bureau  
*Pennsylvania Code & Bulletin Office*  
647 Main Capitol Building  
Harrisburg, PA 17120

---

**From:** Carlisle, Eric <ercarlisle@pa.gov>  
**Sent:** Tuesday, April 4, 2023 10:36 AM  
**To:** Bulletin <bulletin@palrb.us>  
**Cc:** Hendrickson, Richard <rihendrick@pa.gov>  
**Subject:** Proposed Regulation 11-261

Good morning.

Attached is a combined PDF package amending 31 Pa. Code § 89.12(e) for publication. The Word versions of the Preamble and Annex A are also attached.

Please confirm your receipt and the projected date of publication.

**Eric W. Carlisle**, M.Ed., M.A., M.Ed., M.Leg.S.  
Legal Office Administrator 1 | Regulatory Coordinator  
Insurance Department | Office of Chief Counsel  
1341 Strawberry Square | Harrisburg, PA 17101  
Phone: 717-346-5628 | Fax: 717-772-1969  
[ercarlisle@pa.gov](mailto:ercarlisle@pa.gov) | [www.ogc.pa.gov](http://www.ogc.pa.gov)  
[www.insurance.pa.gov](http://www.insurance.pa.gov)